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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Telecommunications)	CC Docket No. 96-115
Act of 1996:)	
)	
Telecommunications Carriers' Use of)	
Customer Proprietary Network Information)	
and Other Customer Information)	
)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the)	
Communications Act of 1934, as amended)	

To: The Commission

**COMMENTS ON PETITIONS
FOR RECONSIDERATION AND CLARIFICATION**

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June 25, 1998

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SUMMARY

Celpage supports the arguments of Petitioners who urge the FCC to reconsider its restrictions on the use of CPNI for customer equipment and information services. Particularly in wireless telecommunications, "CPE" is an integral part of the communications service. A CMRS handset or pager must be programmed to receive on a particular carrier's frequency, and to be compatible with that carrier's network, or the customer will not be able to receive calls or messages. Similarly, "information services" such as voice mail functions have been historically bundled with CMRS telecommunications services, for receipt on the same subscriber unit; those services are inseparable both technologically and from the customer's prospective.

CPE and information services are thus "necessary to, or used in" CMRS telecommunications services within the meaning of Section 222. Use of CPNI for combined marketing, maintenance and repair of those services is not prohibited by the statute, and absent such a prohibition, the FCC should not disturb long-standing customer expectations that wireless CPE and information services are part of the "total service" to which they subscribe.

Celpage also supports the overwhelming consensus of Petitioners that the FCC's prohibition on customer retention and "win-back" use of CPNI is not required by the language of Section 222, and will undermine the pro-competitive goals of that Section and of the Telecommunications Act generally. Particularly in the highly-competitive CMRS industry, customer retention and win-back efforts have benefitted consumers, as the former (or soon-to-be-former) carrier vies with competitors for a subscriber's business, the subscriber receives information about the widest range of service and pricing plans suited to his or her needs. Rather than complaining of loss of their privacy rights, customers expect and have encouraged carriers to

engage in such "bidding wars." Carrier efforts to provide better-tailored service packages or more economical pricing plans to departing customers will be hampered unless the incumbent carrier can access those customers' account records to ascertain their needs. Since the statute is silent as to customer retention and win-back uses of CPNI, the FCC should not so blithely eliminate those long-standing and pro-competitive practices.

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To: The Commission

**COMMENTS ON PETITIONS
FOR RECONSIDERATION AND CLARIFICATION**

Celpage, Inc. ("Celpage"), by its attorneys and pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405 (the "Act"), and Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby respectfully submits these comments on the Petitions for Reconsideration and Petitions for Clarification (the "Petitions")¹ filed in response to the Commission's Second Report and Order and Further Notice of Proposed Rule Making in the above referenced proceeding (the "CPNI Order").² In support hereof, the following is respectfully shown:

¹ Public Notice of the filing of the Petitions was published in the Federal Register on June 10, 1998; the Public Notice specified an opposition deadline of June 25, 1998. See 63 Fed. Reg. 31776 (June 10, 1998).

² FCC 98-27 (released February 26, 1998). The CPNI Order was published in the Federal Register on April 24, 1998. See 63 Fed. Reg. 20326 (April 24, 1998).

I. Statement of Interest/Background

Celpage, Inc. is a mid-sized company which, through its wholly-owned licensing subsidiary, Pan Am Wireless, Inc., is the second largest provider of Commercial Mobile Radio ("CMRS") paging services in the Commonwealth of Puerto Rico (the largest is a subsidiary of the Commonwealth's incumbent local exchange carrier). Celpage also provides paging services in the U.S. Virgin Islands. Celpage serves approximately 138,000 subscribers in Puerto Rico alone.

Celpage prides itself on being responsive to the demands of its customers. The rules adopted by the Commission governing telecommunications carriers' uses of customer proprietary network information ("CPNI") will likely have a profound, adverse impact on the manner in which Celpage's personnel are permitted to communicate with its subscribers. Celpage has standing to file these Comments as a carrier whose business may be adversely affected by the CPNI Order.

As indicated in the Petitions filed in this proceeding, similar effects are being felt by carriers in all sectors of the telecommunications industry. From the largest incumbent local exchange carriers ("ILECs"), to small and mid-sized competitive carriers like Celpage, the twenty-seven Petitioners in this proceeding expressed concern for the costs and anti-competitive inefficiencies that various provisions of the Commission's new CPNI rules will impose on the telecommunications industry. Those Petitioners also demonstrated that the challenged rule provisions are not mandated by Section 222 of the Act; and indeed, that those provisions will undermine the pro-consumer and pro-competition purposes of that statutory provision.

II. Maintenance and Repair of Wireless Devices Should be Included in the Exemptions.

Section 222(c)(1)(B) of the Act permits a carrier to use or disclose CPNI in "the provision of services necessary to, or used in, the provision" of the telecommunications services to which a customer subscribes. 47 U.S.C. § 222(c)(1)(B). In interpreting the "necessary to, or used in" language of the Act, the FCC held that customer equipment and information services are *not* considered "services necessary to, or used in" the underlying telecommunications service. CPNI Order at ¶¶ 26, 45-46, 71-72. The FCC found that installation, maintenance and repair services *related to inside wiring* fell within the statutory exemption for "necessary" services. CPNI Order at ¶¶ 78-79. Similarly, in interpreting Section 222(d)(1) (which permits a carrier to use CPNI "to initiate, render, bill and collect for telecommunications services"), the FCC merely stated that Section 222(d)(1) permits a carrier to use a customer's CPNI in connection with the installation, maintenance and repair of inside wiring. Id. at ¶ 82.

The Petitioners addressing this issue unanimously object to the Commission's exclusion of customer equipment from the exemption provided by Sections 222(c)(1)(B) and 222(d)(1), at least insofar as those restrictions apply to wireless services and other competitive telecommunications services. See, e.g., ALLTEL Communications, Inc. Petition for Reconsideration ("ALLTEL Petition") at 6-7; National Telephone Cooperative Assoc'n. Petition for Reconsideration ("NCTA Petition") at 5; Frontier Corporation Petition for Reconsideration ("Frontier Petition") at 10-11; SBC Communications, Inc. Petition for Reconsideration ("SBC Petition") at 3; Petition of Bell Atlantic for Partial Reconsideration and Forbearance ("Bell

Atlantic Petition") at 6. In particular, all Petitioners addressing this issue agreed that CMRS customer devices are an essential and integral part of the "rendering" of a wireless service, and should be treated similarly to inside wiring. See, e.g., Cellular Telecommunications Industry Assoc'n. Petition for Reconsideration and Petition for Forbearance ("CTIA Petition") at 25-27, 30-31; Personal Communications Industry Assoc'n. Petition for Reconsideration ("PCIA Petition") at 7-9; Comcast Cellular Communications, Inc. Petition for Reconsideration ("Comcast Petition") at 13; Petition for Limited Reconsideration and/or Forbearance of PrimeCo Personal Communications, L.P. ("PrimeCo Petition") at 5-6; Metrocall, Inc. Petition for Reconsideration or Clarification ("Metrocall Petition") at 5; RAM Technologies, Inc. Petition for Reconsideration or Clarification ("RAM Petition") at 5; GTE Petition for Forbearance, Reconsideration and/or Clarification ("GTE Petition") at 10-11.

Celpage agrees with those Petitioners that the provision of wireless "CPE" falls well within the exemptions provided by Sections 222(c)(1)(B) and (d)(1). As the Petitioners note, the customer's unit is a necessary component in the provision of a wireless service; the subscriber unit must be programmed to receive signals on a particular frequency (and for two-way CMRS, to transmit on a particular frequency), *and* in a manner that is compatible with the individual carrier's network. See, e.g., Vanguard Cellular Systems, Inc. Petition for Reconsideration and Clarification ("Vanguard Petition") at 9-10; GTE Petition for Forbearance, Reconsideration and/or Clarification ("GTE Petition") at 11. As with inside wiring, the CMRS subscriber unit is absolutely essential for the completion of message transmission to the customer, and serves little or no other purpose. See CTIA Petition at 30-31; CommNet Cellular, Inc. Petition for

Reconsideration and Clarification, or in the Alternative, Forbearance ("CommNet Petition") at 2-3; ComCast Petition at 13; AT&T Petition for Reconsideration and/or Clarification ("AT&T Petition") at 7; PrimeCo Petition at 5; Petition for Reconsideration and Clarification of Omnipoint, Inc. ("Omnipoint Petition") at 7. The service of providing (or re-tuning), maintaining and repairing subscriber equipment is thus not merely "used in" but "necessary to" the provision of CMRS service to subscribers. See 47 U.S.C. § 222(c)(1)(B).

Moreover, as several Petitioners observe, the use of CPNI in the marketing, repair and maintenance of CMRS subscriber units does not undermine the privacy considerations of Section 222, but rather comports with long-held customer expectations. See, e.g., Omnipoint Petition at 8-10; 360° Communications Company Petition for Reconsideration and Clarification or Forbearance ("360 Petition") at 7-8; PrimeCo Petition at 6; BellSouth Petition at 12-13; PCIA Petition at 9; CTIA Petition at 21-22, 25-27. No restrictions have ever applied to bundled CMRS service and equipment offerings; the service and equipment are linked in consumers' minds. See, e.g., SBC Petition at 3; Vanguard Petition at 9-10; PCIA Petition at 8-9; BellSouth Petition at 11-13. To the contrary, Celpage, like a number of Petitioners, anticipates that the FCC's CPNI Order will generate confusion and anger from customers whose needs for both upgraded service and equipment suddenly cannot be met by a customer service representative without a protracted "disclosure and consent" procedure. See, e.g., PCIA Petition at 9; Metrocall Petition at 5-6; RAM Petition at 5-6. Cf. Comcast Petition at 14-15.

III. The Commission Should Clarify its Restrictions Concerning "Information Services"

Similarly to its treatment of CPE, the Commission prohibited carriers from using CPNI derived from their provision of telecommunications services in the marketing of "information services." CPNI Order at ¶¶ 71-72 Clarification Order at ¶ 4. Petitioners uniformly argue that the Commission's restrictions concerning information services are based on an unnecessarily rigid interpretation of Section 222. *See, e.g., Omnipoint Petition* at 4-6; *360 Petition* at 7-8; *Competitive Telecommunications Assoc'n. Petition for Reconsideration ("CompTel Petition")* at 18-19; *SBC Petition* at 7; *Bell Atlantic Petition* at 7-8; *CTIA Petition* at 28-30. Celpage agrees with Petitioners.

As several Petitioners observe, competitive wireless carriers have long provided services without regard to the regulatory distinctions drawn in monopolistic wireline services; the distinctions between "telecommunications" and "information" services, or between "basic" and "enhanced" services, have no meaning in the wireless industry. For instance, cellular carriers have long provided messaging, call forwarding and other information services, as part of an integrated package. *See CTIA Petition* at 9; *Vanguard Petition* at 12. Likewise, paging carriers often integrated their one-way signaling services with voice mail, operator answering services features, and other information services as a single service package. *See, Metrocall Petition* at 7-8; *RAM Petition* at 7-8; *PCIA Petition* at 12-13. The FCC's PCS rules were adopted with the express expectation that these carriers would combine multiple service options for use by the subscriber in a single handset. *See* 47 C.F.R. § 24.3.

As several Petitioners note, neither wireless carriers nor their customers have ever made such sharp distinctions in the components of integrated service packages', the Commission should not arbitrarily require them to do so now. See, e.g., Metrocall Petition at 8-9; RAM Petition at 8-9. Consumers consider "information services" such as voice mail to be an integral, inseparable part of the "telecommunications services" to which they have subscribed. See, e.g., GTE Petition at 22; PrimeCo Petition at 6-7; AT&T Petition at 8; Vanguard Petition at 12; Paging Network, Inc. Petition for Reconsideration ("PageNet Petition") at 5. Any attempt by the carrier to treat those service components as separate and distinct will simply be confusing for customers (as well as for the carrier and its personnel). Cf. PageNet Petition at 6.

Celpage concurs with the Petitioners that fostering subscriber confusion, in addition to disserving the public interest, is simply unnecessary to comply with Section 222. As the Commission found in interpreting whether a telecommunications service is "the telecommunications service from which such information is derived," for purposes of Section 222(c)(1)(A), the Commission can and should adopt a practical "total service" interpretation of the statute. CPNI Order at ¶ 25. That approach is soundly based on the theory that a customer implicitly consents to the CPNI in the servicing of his or her account, and expects the carrier to have access to such information for all services the customer purchases from that carrier. Id. at ¶¶ 54-55. The Commission found that this approach not only protected customer privacy, but also enhanced customer convenience and control. Id.

As several Petitioners observed, from the wireless customer's prospective, his or her "total service" package consists of all the services he or she obtains from the same carrier -- and certainly all that are received on the same handset or pager. See, e.g., PCIA Petition at 13; CTIA

Petition at 28-29. Cf., NCTA Petition at 7. For example, Celpage has found that its customers in Puerto Rico require bundled alphanumeric paging service with operator dispatch service. Due to Puerto Rico's standard of living and relatively low landline telephone penetration rates, it is not a market with much demand for stand-alone numeric pager services. Rather, pagers act as the low-cost alternative to other communications services. Bundled paging and dispatch services meet a public need for affordable communications, in a manner that stand-alone paging services could not; many customers would not subscribe to one of those services without the other. To the customer's mind, those bundled services constitute his/her "telecommunications service."

An application of the "total service" approach that includes "information services" bundled with "telecommunications services," without regard to arbitrary regulatory classifications developed in the wireline context, would thus best comport with consumers' understanding of the wireless services they receive, and would allow CMRS carriers to communicate with their customers in a manner consistent with that consumer understanding. That approach would therefore not infringe on any information that the customer deems "private" or "outside" of the customer-carrier relationship, while still allowing the customer to obtain the convenience attendant to bundled wireless services.

In short, by serving customer privacy and customer convenience equally well, the inclusion of bundled wireless information services in the "total services" approach will fulfill the goals of Section 222. Celpage supports the Petitioners' requests that the restrictions on CPNI use for marketing information services be reconsidered and eliminated.

IV. The Anti-"Win Back" Restrictions Should be Reconsidered.

The CPNI Order held that carriers may not use a customer's CPNI in order to market to a customer who has switched to another carrier. CPNI Order at ¶ 85. That Order further held that carriers may not use CPNI for customer retention purposes, even though the customer has not yet switched carriers. Id. Celpage strongly disagrees with the FCC's conclusions in this regard, and requests that this issue be reconsidered.

Every Petitioner addressing this issue opposes any restrictions on the use of CPNI for customer retention and "win-back" efforts, at least for carriers in competitive services. PageNet Petition at 2-4; Frontier Petition at 7-9; ALLTEL Petition at 7; CTIA Petition at 10-13, 31-33; PCIA Petition at 9-11; Comcast Petition at 16-18; Vanguard Petition at 12-14; Bell Atlantic Petition at 16-17; AT&T Petition at 2-5; USTA Petition at 6-8; SBC Petition at 8-10; Petition of MCI Telecommunication Corp. for Reconsideration and Clarification ("MCI Petition") at 50-51; BellSouth Petition at 16-18; PrimeCo Petition at 9-10; GTE Petition at 32-37; 360 Petition at 10-11; Omnipoint Petition at 17-19. Many Petitioners observe that this restriction actually deprives customers of the main benefit of a competitive market: it eliminates "bidding" between two or more carriers to determine which can best meet that customer's individual needs, at the best price. See, e.g., Omnipoint Petition at 18; PageNet Petition at 4; PrimeCo Petition at 9. And as some Petitioners have found, customers in competitive telecommunications markets *expect* their former or "soon-to-be-former" carrier to attempt to retain their business by offering better-tailored service packages, 360 Petition at 10; GTE Petition at 33; Vanguard Petition at 13; and, such precise tailoring to the departing customer's needs cannot be achieved without the use of CPNI. PageNet Petition at 3.

The FCC was not required to impose these service and marketing constraints on CMRS carriers. Section 222 is silent as to the use of CPNI for customer retention and "win-back" efforts *Cf.* 47 U.S.C. § 222. Consequently, Celpage submits that the Commission should honor the basic interest of Section 222 (protection of customer privacy, convenience and control, and fostering of fair competition) and reconsider these unnecessary regulatory constraints on competition. See CPNI Order at ¶¶ 37, 53. Celpage respectfully submits that, at least in the highly competitive CMRS market, the purposes of Section 222 will not be impeded by eliminating the customer retention and "win-back" restrictions; the pro-competitive purposes of Section 222 will be furthered by lifting those restrictions.

The CMRS market in general, and the paging market in particular, are characterized by multiple service providers and options. See Third Annual CMRS Competition Report, FCC 98-91 at 3-4 (released June 11, 1998) ("Third CMRS Report"). Customer "churn" in the overall CMRS market is approximately 30%, see CTIA Petition at 10; that figure is even higher for paging services. Id. at 51. The results have been intense price competition among, and the development of innovative service offerings by, CMRS carriers, which are increasing as new CMRS carriers continue to enter the market. Id. at 19-21; 40.

Consumers have benefitted from these trends, as carriers continually seek ways to retain their existing subscribers and attract new ones. Id. at 22-26, 47-48; see also, Omnipoint Petition at 18; CTIA Petition at 10-11. CMRS customers expect their carriers to use the customer's own service records to provide upgraded or lower-priced service packages -- especially when a customer indicates an intention to switch to a competitor. 360 Petition at 10; PCIA Petition at 10; CTIA Petition at 33. In this intensely competitive environment, a carrier that does not "court"

its subscribers stands little chance of remaining in business. Rather than considering this use of CPNI as "invasive" incursions on their privacy, wireless consumers have actively encouraged their current carriers to fight to retain their business. 360 Petition at 10; GTE Petition at 33; CTIA Petition at 33. Put another way, consumers expect that their CMRS carriers will use account information to meet the offers of competing carriers, in an effort to continue "rendering" telecommunications services to the consumer, or to "initiate" upgraded or lower-priced packages of those telecommunications services. Cf. 47 U.S.C. § 222(d)(1). Absent an express Congressional directive, those long-standing consumer expectations should not be disturbed.

Moreover, the use of a customer's CPNI for customer retention methods confers no unfair advantage on the incumbent carrier. The use of CPNI merely allows the incumbent to try and match a defecting customer to a service plan or package that might serve that customer's needs better than the competing carrier's services. As evidenced by the high churn rates in CMRS services, see, e.g., Third CMRS Report at 51; the incumbent does not always succeed in those retention efforts, even without artificial regulatory restraints on the incumbent's use of CPNI. Permitting continued use of CPNI for CMRS customer retention and "win-back" efforts will simply allow customers to continue to receive all relevant information about the services available to them as they contemplate switching carriers. The opportunity for fully-informed consumer choice is a hallmark of a fully-functioning competitive market; it is at best unlikely that Congress intended to restrict that opportunity in enacting the "pro-competitive, deregulatory" Telecommunications Act. See Joint Explanatory Statement of the Committee of Conference, 104th Cong., 2d Sess., Report 104-23, p. 113-214, 113 (Feb. 1, 1996).

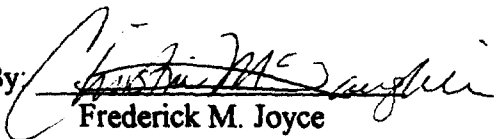
Consequently, Celpage joins with those Petitioners who urge that the use of CPNI for customer retention and "win-back" is not prohibited by the letter of Section 222, and fully comports with the spirit of that provision. The customer retention and "win-back" prohibitions should be reconsidered, and eliminated.

CONCLUSION

For all the foregoing reasons, Celpage supports the Petitioners' requests for reconsideration of the restrictions on the use of CPNI with regard to customer equipment, information services, and customer retention and "win-back" efforts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rhonda M. Johnson, Legal Secretary for Joyce & Jacobs, Attorneys at Law, L.L.P., certify that on the 25th day of June, 1998, copies of the foregoing Comments on Petitions for Reconsideration and Clarification were sent, via first class U.S. mail, postage prepaid, to the following:

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